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Property—Trusts and Future Interests—Charitable Trusts

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should pass as intestate property upon the termination of the two measuring lives.

The Appellate Division modified the decision of the Surrogate, ruling that since the will made no provision for the payment of the income during the lives of the grandson and grandnephew, and since the income could not be accumulated (some of the residuary legatees being adults),[77] both of the latter measuring lives should be excised and the corpus of the widow's trust should pass to the residuary legatees at her death.

The Court of Appeals reversed and reinstated the decision of the Surrogate. Finding that the testator had provided for a delay in the distribution of the corpus of the widow's trust until his grandson had reached twenty-one to assure an adequate principal in the residuary trust to pay the annuity, the court ruled that the trust was, therefore, an active one. The fact that the secondary purpose of accumulating the excess income was illegal could not destroy the validity of a trust having this valid primary objective. The court further agreed with the determination of the Surrogate that the gifts to the residuary legatees could not be accelerated inasmuch as they were based on survivorship and, therefore, contingent.[78] The finding that the corpus of the widow's trust passed as intestate property necessarily followed.

Charitable Trusts

It is an established principle that where a testator has apparently sought to leave money for a charitable purpose, a liberal construction is to be given to the terms of the will in order to uphold it and validate the bequest.[79]

In the case of In re *Potter's Will,*[80] testator established a trust for the benefit of the "education of the children of the poor" and "for the education of the children of the poor who shall be educated in the academy in the village of Huntington."[81] The academy was closed in 1858 and the building was torn down.

The question before the court was whether the testator had a general charitable intent to educate the children of the poor, or whether he had a specific charitable intent which failed when the

77. See PERSONAL PROPERTY LAW § 16, REAL PROPERTY LAW § 61.

78. See *Matter of Crane,* 164 N. Y. 71, 58 N. E. 47 (1901).

79. *Cf. In Re Pattberg's Will,* 282 App. Div. 770, 123 N. Y. S. 2d 564 (2d Dep't 1953), *aff'd,* 306 N. Y. 835, 118 N. E. 2d 903 (1954); *Matter of Neher's Will,* 279 N. Y. 370, 18 N. E. 2d 625 (1939).

80. 307 N. Y. 504, 121 N. E. 2d 522 (1954); See *Williams v. Williams,* 8 N. Y. 525 (1853) where the same trust provision was before the court.

81. 281 App. Div. 981, 120 N. Y. S. 2d 636 (2d Dep't 1953).

academy went out of existence. The Surrogate's Court and the Appellate Division [82] held that the trust terminated when the academy was closed. The Court of Appeals, (quoting the principle stated in the first paragraph) reversed the lower courts solely on the matter of construction saying that testator intended that the trust be perpetually used for the education of the poor, with the additional expression of a mere preference that they be educated at the academy.[83] They therefore concluded that the trust survived the existence of the academy.

XI. Torts

Emergency Doctrine

In the determination of negligent conduct, the fact that the actor is confronted with a sudden emergency, not caused by his own tortious conduct, which requires instant decision is a factor in an appraisal of the reasonable character of his choice of action.[1] The fact that the emergency is created by the actor's own conduct does not prevent the rule from being applicable if his conduct is not tortious.[2]

In *Meyer v. Whisnant*,[3] the Court of Appeals upheld a dismissal of complaints against a host motorist as a matter of law where it appeared that a "sudden, unanticipated, and unexplained" movement of a westbound auto into the path of the eastbound host motorist's vehicle rendered him the helpless victim of an emergency for which he was not responsible. The fact that defendant motorist was guilty of a violation of the traffic law[4] was insufficient to subject him to tort liability in the absence of a showing of logical connection between the violation and the accident.

A dissenting opinion by Judge Conway, concurred in by Chief Judge Lewis and Judge Froessel, denied the availability of the doctrine to defendant, and stated that plaintiffs had made out a

82. Throughout the long clause testator referred to children, and to the education of children, on thirteen different occasions. The academy was mentioned five times.

83. The court placed emphasis on the fact that children were mentioned thirteen times and the academy only five times.

1. Restatement, Torts § 796.

2. *Id.* § 796, comment (a).

3. 307 N.Y. 369, 121 N.E. 2d 372 (1934).

4. Vehicle & Traffic Law § 81 (26). "The driver of a vehicle when upon a highway outside of a business or residential area shall use the traffic lane at the extreme right except when passing a vehicle, pedestrian, animal or substantial object in such lane." In the instant case, defendant was driving in the left lane of two eastbound lanes at the time of the accident.